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COLLIER *v.* HIDEN.

March 15, 1917.

[91 S. E. 630.]

1. Boundaries (§ 30*)—Petition to Determine—Parties—Statute.—Under Acts 1912, p. 133, providing that any person having an interest in realty, on petition filed in the court which would have jurisdiction in an action of ejectment, shall have the right to have ascertained and designated the true boundary lines as to one or more of the coterminous landowners, and that all persons interposed in coterminous real estate shall be made parties to the petition, parties entitled in fee in remainder to the land in which petitioner for ascertainment of boundaries owned only a life estate were necessary parties to the proceeding, and should have been made parties plaintiff or defendant to the petition.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. § 144.* 16 Va.-W. Va. Enc. Dig. 226.]

2. Jury (§ 25 (2)*)—Waiver—Statute.—By provision of Pollard's Code 1914, § 3166, a trial by jury is waived if neither plaintiff nor defendant demands it.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 155, 156.* 9 Va.-W. Va. Enc. Dig. 20.]

3. Jury (§ 19 (14)*)—Petition to Determine Boundaries—Statute.—Acts 1912, p. 133, providing that trial by jury of a petition to determine boundaries may be waived by consent of parties, requires a trial by jury in each case arising under it, unless such trial is waived by the consent of parties plaintiff and defendant.

[Ed. Note.—For other cases, see Jury, Cent. Dig. § 123.* 9 Va.-W. Va. Enc. Dig. 19.]

Appeal from Circuit Court, Greene County.

Petition for ascertainment of boundaries by Hiram Hiden against Sallie Collier. From a decree for plaintiff, defendant appeals. Reversed.

John S. Chapman, of Standardsville, for appellant.

E. M. Averill, of Standardsville, for appellee.

VIRGINIA RY. & POWER CO. *v.* GORSUCH.

March 15, 1917.

[91 S. E. 632.]

1. Trial (§ 69*)—Reopening Case—Discretion of Court.—Reopening the case to take additional testimony inadvertently omitted be-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ing within the trial court's discretion and not reviewable unless arbitrarily exercised, it was proper, in action against street railway for injuries to automobile passenger, to permit reopening the passenger's case to show ownership of the street car which struck the automobile.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 164, 165.* 13 Va.-W. Va. Enc. Dig. 246.]

2. Negligence (§ 93 (2)*)—Imputed Contributory Negligence.—That the wife owned an automobile which she sent to another city for her husband to use, and on her casual visit to the city, while riding with him in the automobile, it was struck by a street car, at a crossing, while she was engaged in conversation with another passenger and exercising no control over its operation, did not render negligence of the husband, if any, imputable to her, since the husband was in effect her bailee.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 149.* 7 Va.-W. Va. Enc. Dig. 341.]

Error to Circuit Court of City of Richmond.

Action by Mrs. Sophia Gorsuch against the Virginia Railway & Power Company. Judgment for complainant, and defendant brings error. Affirmed.

H. W. Anderson, A. B. Guigon, and Thos. P. Bryan, all of Richmond, for plaintiff in error.

J. Kent Rawley and M. J. Fulton, both of Richmond, for defendant in error.

MURPHY'S HOTEL CO., Inc., et al. *v.* HERNDON'S ADM'R et al.

March 15, 1917.

[91 S. E. 634.]

1. Evidence (§ 76*)—Presumption—Failure to Testify.—No presumption arises from failure of claimants to testify; the execution and delivery of the notes evidencing the debts being solely in the knowledge of the debtor, who testified for them, and the consideration being equally in her knowledge, and there being no allegation of collusion between them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 96.* 11 Va.-W. Va. Enc. Dig. 328.]

2. Witnesses (§ 397*)—Impeachment by Inconsistent Statements—Effect.—Any impeachment of a witness as to consideration by

*For other cases see same topic and KEY-NUMBER in all KEY-Numbered Digests and Indexes.